



August 5, 1999

Mr. J. Robert Giddings
The University of Texas System
201 West 7th Street
Austin, Texas 78701

OR99-2199

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126220.

The University of Texas at Austin ("UT") received requests for the following information:

1. Any insurance policy held by the University or the University Police Department which may provide indemnity for any of the following claims: battery, unnecessary use of force, assault, false arrest, malicious prosecution, or for Civil Rights claims in general and any documentation tending to establish the monetary or qualitative limits of such claims, and particularly any documentation discussing whether any such policy may be said to cover attorney's fees under Section 1988 the Fees Act.
2. Any legal documents, including briefs, having been filed on behalf of the University or the UTPD arguing for immunity for its agents under the doctrine of Sovereign Immunity.
3. Any documents tending to establish by whose individual authority agents of the University of Texas Police Department were deployed to the West Mall Building on May 3, 1999.
4. Any documents discussing University policy with respect to UTPD use of force as a response to peaceful demonstrations.

5. Any documents establishing University policy as to UTPD training with respect to unnecessary use of force, particularly as they relate to peaceful demonstrations.
6. Any documentary material used in such training.
7. Any official or documented informal complaints alleging harassment, false arrest, malicious prosecution, verbal or physical abuse, unnecessary use of force or other serious misconduct by any of the officers deployed to the West Mall Building on May 3, 1999.
8. Any documents tending to establish the presence or absence of any criminal record or history of mental illness on the part of any of the officers deployed to the West Mall Building on May 3, 1999.

You have provided to this office for review representative examples of information responsive to items 1, 2, 3, 4, 5, 6, and 7.¹ You claim that the requested information is excepted from disclosure in its entirety by section 552.103 of the Government Code. You assert no further exceptions for information responsive to request items 1, 2, 4, 5, 6 or 7. You contend that certain arrest reports, which you have supplied to this office, may be responsive to request item 3 and are excepted from disclosure by section 552.108 of the Government Code. You relate that, with the exception to these reports, UT has no information responsive to request item 3. Finally, you contend that information responsive to request item number 8 is confidential under various statutes and is excepted from disclosure by section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the applicability of section 552.103 to the subject information. This section excepts from disclosure information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party." Gov't Code § 552.301. You contend that the subject information relates to pending criminal prosecutions. However, neither UT, nor any employee of UT, is a party in any of these cases. A governmental body may assert the litigation exception for information that a district attorney determines relates

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. Information not provided for our review must be released unless it is considered confidential by law.

to a pending criminal case. Open Records Decision No. 469 (1987). Here, you have supplied the affidavit of a chief of police in support of your argument. However you have not submitted a pertinent representation by a prosecutor. You have therefore not shown how the pending litigation satisfies the first prong of the test.

You also argue that litigation is reasonably anticipated. To demonstrate that litigation is reasonably anticipated, a governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture; the mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.* This office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and where a potential party threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). In this case, you base your argument solely on the fact that the requestors seek information regarding insurance coverage. You have shown no concrete steps taken by any potential party toward litigation. We conclude that you have not shown that litigation is reasonably anticipated. As you have not established the first prong for section 552.103 coverage, no information may be withheld pursuant to this section.

We next address the issue you raise regarding the burden of producing the responsive information. You relate that because information requested in item 2 is unlimited in time, scope or reference to a specific law suit, you are unable to respond and “must refer the requestor to the litigation files available to the public at the Travis County Courthouse and the U.S. Federal District court for the Western District of Texas, Austin Division.” A governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision 561 (1990). You acknowledge that you have information responsive to this request but urge no exception to public disclosure applicable to this information, arguing only that the request is too broad. When a requestor makes an overly broad request, the governmental body should make a good faith effort to advise the requestor of the types of documents available so that the requestor may narrow the request. *See* Open Records Decision No. 87 (1975). In this case you have apparently made no such effort. Neither the cost nor the method of supplying requested information may be considered in replying to a request for public information. Open Records Decision No. 465 (1987). As you have raised no exception to the disclosure of the information responsive to this request item, unless it is confidential, it must be made available to this requestor.

We note that the requestors seek to inspect the information, where there is a large number of responsive documents, and choose those items the requestors wish to have copied. No

charge may be imposed for allowing access to paper records that do not contain confidential information. Gov't Code § 552.271. Similarly, no charge may be imposed for allowing access to information that exists on an electronic medium, where programming or manipulation of the data is not required. Gov't Code § 552.271. However, a requestor must pay for the costs of reproduction, and may be required to post bond as a condition precedent when preparation is "unduly costly" and reproduction would cause "undue hardship" if costs were not paid. Open Records Decision No. 467 (1987); *see also* Gov't Code § 552.263. In assessing costs, a governmental body may charge for services and materials only as provided by the Open Records Act. Open Records Decision No. 467 (1987). The Open Records Act requires, with exceptions not applicable here, that governmental bodies apply the rules adopted by the General Services Commission in determining charges for providing copies of public information. Gov't Code § 552.262. These rules have been promulgated as Sections 111.61 - 70 of title 1 of the Texas Administrative Code.

You contend that certain offense reports may be responsive to request item 3, and are excepted by section 552.108 of the Government Code. This section states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You have provided the affidavit of a chief of police who attests that release of the subject information would interfere with pending criminal prosecutions. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." However section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, the department may withhold these reports from disclosure based on section 552.108(a)(1).

Lastly, we consider the application of section 552.101 to the subject information. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information protected by other statutes. You relate that criminal history information responsive to request item 8 is obtained from criminal history data bases and is made confidential by law. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice

agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to a requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990).* Furthermore, any CHRI obtained from any criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

You also indicate that the history of mental illness information responsive to request item 8 is confidential. You supply documentation that indicates that such information consists of evaluations generated by licensed psychologists or psychiatrists. Such records are subject to chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional and, with exceptions not applicable here, prohibits access to such records. *See Open Records Decision No. 565 (1990).* This information must therefore be withheld under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Jay Burns", with a stylized flourish at the end.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 126220

Encl. Submitted documents

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